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RUSSIAN PERSPECTIVES ON INTERNATIONAL LAW SYMPOSIUM

Is Russia the guardian of Humanitarian Intervention?

SELEN KAZAN — 24 January, 2018



Print



In the Security Council, the Russian Federation has repeated put forward its stance regarding humanitarian intervention and its concern that this may be misused to press western influence and regime change in no uncertain terms. Thus, Russia used its veto powers four times to block resolutions on Syria that Russia perceives to be damaging its ally, the Syrian regime of Bashar al-Assad. Russia's argument on fearing regime change rests on its experience in Libya and NATO's intervention in 2011. Many argued that NATO's intervention in Libya was a successful implementation of the "Responsibility to Protect – R2P" – the contemporary version of the notion of humanitarian intervention.

This post deals with Russia's view on humanitarian intervention by NATO powers and its justification for its own intervention in Ukraine, and the recent 2017 judgement of the International Court of Justice on that matter. How is Russia's justification compatible with international law? Does Russia's and China's frequent use of vetoes concerning humanitarian intervention motivate other permanent members of the Security Council to go "forum shopping" and does this undermine the security council's envisioned monopoly on the use of force and its general creditability?

Vitaly Churkin, Russia's permanent representative to the United Nations, argues Russia vetoed certain resolutions to protect the security council's integrity by preventing it from being used as a vehicle for overthrowing governments.[1] It has been proposed by France that the five permanent members voluntarily suspend their veto rights in situations where genocide or other mass atrocities are being committed. But who decides when this is the case and will all permanent members be able to agree on the same status? Churkin voiced its opinion that this may be open to manipulation and mentioned that he could easily picture situations in which some States say that mass atrocities happen (so that there should be no veto) and then "propose something crazy that will lead to further exacerbating the situation (...)".[2]

Yet, on 1 March 2014, the Russian Federation deployed troops and armored vehicles to the Crimean peninsula, a recognized territory of Ukraine, and occupied the region. In response to these development, the UN stated that Russia's actions violate the UN Charter (in particular Article 2(4)) and called upon Russia to respect the "sovereignty and territorial integrity of Ukraine". Vladimir Putin claimed that the intervention was a response to "real threats" to Russian-speaking minorities in the region. This is the same kind of argument made by other world leaders for a humanitarian intervention to stop the Syrian civil war.

Russia has used its veto right 13 times after it took over the Soviet seat on the council. In many of these cases it was to stop a multilateral intervention in other member states, most notably Kosovo, Libya and now Syria. The use of humanitarian intervention may broaden the current exceptions to article 2 (4) of the UN charter – the right to self-defense and Chapter VII. The question is, if an exception should be interpreted broadly or narrowly. Will a broad interpretation serve an exception's purpose? Humanitarian intervention may circumvent the Security Council but another downside to it is also the identification of conditions for a necessary threshold that justify intervention and permitting an individual state actor or actors to make the decision to intervene. One should, however, keep in mind that while the concept of humanitarian intervention offers a possible solution for the crisis in Syria, it also provides legal justification for Russia's action in

Ukraine.[3]

The ease with which the concept of humanitarian intervention can be used for subjective use of force determinations is extremely troubling and raises potential for conflicts. Consequently, the question is what poses a greater risk to international peace: a humanitarian crisis or a subjective legal basis that empowers nations to unilaterally start an international armed conflict?

The recent International Court of Justice judgement in the case *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)* did unfortunately not shed light on these questions due to the lack of a special agreement between Ukraine and Russia. It was highly unlikely that the Russian Federation would agree to international adjudication on its intervention of the Crimea with Ukraine and to consent to the court's jurisdiction. Therefore, Ukraine made a request for provisional measures under Article 41 of the ICJ statute based on the 1999 International Convention for the Suppression of the Financing of Terrorism and on the 1965 International Convention on the Elimination of All Forms of Racial Discrimination. Rather than solving an inter-state dispute the court had to focus on individual rights to establish jurisdiction. Conclusively, the court rejected Ukraine's argument to impose provisional measures against Russia for its support of rebels in eastern Ukraine, while at the same time acknowledging that Ukraine has a case against Moscow for discrimination in Russia-annexed Crimea. In its operative clause, however, the court mentioned the 2014 Minsk Agreement and put the issue in the political arena again rather than settling a legal dispute. One might wonder how the case would have been decided if the jurisdictional basis had been a special agreement between the two parties concerning the intervention.

All in all, it should be noted that the dispute on humanitarian intervention through the Russian lens might be perceived as hypocritical. The constant blockage of security council actions may lead to "forum shopping" as noted by Samantha Power, the US permanent representative to the UN, by going elsewhere to have

atrocities investigated. This was one of the main arguments in favour of the notion of humanitarian interventions, as was the case with Kosovo resulting in NATO's intervention in Kosovo without the support of the Security Council. Currently, Russia is in a delicate position: if Russia wants the international community to accept and support its conduct in the Crimea and Georgia, it must be open for discussions with respect to interventions in Syria and multilateral actions. Only then they can Russia gain credibility support for its unilateral action.

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[1] "Some countries were trying to involve the security council in regime change operations in Syria and we were telling them that it's not the business of the security council to go into regime change mode," Churkin said. "This is a fundamental difference and it's not the fault of the security council that this difference is there."-
<https://www.theguardian.com/world/2015/sep/23/russian-vetoes-putting-un-security-council-legitimacy-at-risk-says-us> accessed 8th of December 2017.

[2] Ibid.

[3] Russia is justifying its actions as a humanitarian intervention to protect ethnic Russians in Crimea. See, e.g., Harriet Torry & Bertrand Bertrand Benoit, *Watchdog Sees No Threat to Ethnic Russians*, Wall St. J., Mar. 12, 2014, at A10.

Cite as: Selen Kazan, "Is Russia the guardian of Humanitarian Intervention?", *Völkerrechtsblog*, 24 January 2018, doi: [10.17176/20180113-185817](https://doi.org/10.17176/20180113-185817).

ISSN 2510-2567

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